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in prosecution of accused, charged with selling ardent spirits, is not in itself sufficient ground for a change of venue.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 782.]

**8. Jury (§ 70 (1)\*)—Jurors Summoned on Second Venire Facias Necessary for Felony Case May Be Used for Misdemeanor Case.**—Where a second venire facias was necessary to complete the panel for the trial of a felony case, the jurors summoned thereby could be used in the trial of a misdemeanor case, though there were a sufficient number of jurors summoned by virtue of the first venire facias for all the misdemeanor cases to be tried at the term under Code 1919, § 4896.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 22.]

**9. Criminal Law (§ 1129 (1)\*)—Objections to Method of Summoning Jury Not Considered.**—Objections to procedure by which jury was obtained, not covered by assignments of error, will not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 575.]

**10. Criminal Law (§ 1120 (3)\*)—Refusal to Permit Certain Questions to Be Answered Not Considered, in Absence of Record Showing What Answers Would Have Been.**—The refusal of the court to allow certain questions to be asked and to allow witness to answer such questions will not be considered, where the answers which the witnesses would have given is not shown by the record.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 595.]

Error to Hustings Court of Portsmouth.

M. C. Rudd was convicted of selling ardent spirits, and he brings error. Affirmed.

*S. M. Brandt* and *R. T. Thorp*, both of Norfolk, for plaintiff in error.

*John R. Saunders*, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

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#### WALKER v. COMMONWEALTH.

March 16, 1922.

[111 S. E. 274.]

**1. Criminal Law (§ 134 (1)\*)—Denial of Motion on Ground of Prejudice Not Supported by Evidence Held Not Error.**—Where defendant did not introduce evidence in support of his motion for a change of venue on the ground of prejudice against him in the city in which he had been indicted, but contented himself merely with an oral argument, the court did not err in denying motion.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 782.]

**2. Intoxicating Liquors (§ 236 (4)\*)—Evidence Held to Show that the Defendant Had Authorized Employee to Sell Whisky.**—In prosecution for selling ardent spirits, evidence held to warrant the jury

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in finding that the sale of whisky by defendant's employee was within the scope of his employment, and had been authorized by the defendant.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 36.]

**3. Intoxicating Liquors (§ 168\*)—Employer Who Authorized Employee to Sell Whisky Guilty of Selling Ardent Spirits.**—Where restaurant employee with authority from employer sold whisky, the employer was guilty of selling ardent spirits, being responsible for the criminal act of his employee.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 17.]

**4. Criminal Law (§ 1173 (5)\*)—Modification of Defendant's Requested Instruction as to Testimony of Paid Detectives Held Not Prejudicial to Defendant.**—In prosecution for selling ardent spirits, modification of defendant's requested instruction, requiring testimony of paid detectives, which invites the commission of crime, to be closely scrutinized, held not prejudicial to defendant, being more favorable than the original request.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 734.]

Error to Hustings Court of Portsmouth.

William R. Walker was convicted of selling ardent spirits, and he brings error. Affirmed.

*S. M. Brandt* and *R. T. Thorp*, both of Norfolk, for plaintiff in error.

*John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

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GRAY *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 276.]

**1. Jury (§ 70(1)\*)—Jurors Summoned to Try Felony Case May Be Used in Trial of Misdemeanor Case, Notwithstanding Method of Impaneling Jury for Trial of Misdemeanor Cases Provided for by Statute.**—Under Code 1919, § 4895, jurors summoned to try a felony and in attendance upon the courts may be used in the trial of a misdemeanor case, tried at the same term, notwithstanding §§ 5992 and 5993, providing method for impaneling jurors for trial of misdemeanor cases.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 22.]

**2. Criminal Law (§ 338 (3)\*)—Testimony that Witness Bought Liquor at Certain Place Admissible against Defendant with Other Evidence that Defendant Was Real Owner Thereof.**—In prosecution for selling ardent spirits, testimony that witness bought liquor at a certain restaurant purporting to be in charge of a person other than the defendant, held admissible as against defendant, in view of other tes-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.